

UNITED STATES COPYRIGHT ROYALTY JUDGES

In the Matter of

Digital Performance Right in Sound
Recordings and Ephemeral Recordings

Docket No. 2009-1
CRJ Webcasting III

ORDER GRANTING IN PART AND DENYING IN PART
THE THIRD MOTION OF REAL NETWORKS AND LIVE365
TO COMPEL SOUNDEXCHANGE TO PRODUCE DOCUMENTS

The Copyright Royalty Judges (“Judges”) have received a third motion from RealNetworks and Live365 (“Services”) seeking to compel SoundExchange to produce certain categories of documents.

The movants have classified the documents they are seeking into three categories: (1) documents referenced by Mr. McCrady and Ms. Kessler in connection with SoundExchange Board of Directors and Licensing Committee meetings related to voluntary agreements under the Webcasting Settlement Acts, SoundExchange’s rate proposal in this proceeding and projections for the webcasting industry; (2) documents referenced by Mr. McCrady and Ms. Kessler that SoundExchange has agreed to gather and produce; and (3) Warner Music Group’s (WMG’s) active agreements with Lala and Slacker

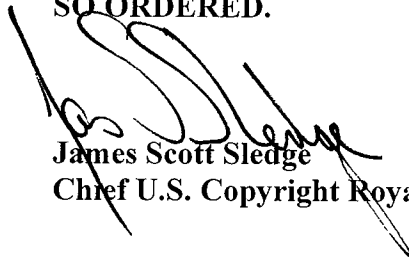
With respect to the first and third category of documents, the motion is **denied as moot**, inasmuch it is duplicative of the second and sixth categories of documents respectively that the Services moved to compel in their first Motion to Compel. The CRJ’s have previously issued an order on these requests. See *Order Granting in Part and Denying in Part the Joint Motion of Real Networks and Live365 to Compel SoundExchange to Produce Documents Requested in Movant’s First Set of Requests*, Docket No. 2009-1 CRJ Webcasting III at 2 (March 5, 2010).

With respect to the second category of documents, the motion is **granted to the extent that SoundExchange has not already complied with the movants’ request**, inasmuch as SoundExchange has agreed to provide this category of documents. Lack of third-party consent will not be permitted to stand as a bar to production where raised by SoundExchange despite their witnesses reviewing or relying upon the information in the documents in preparing their written testimony. See *Order on Motion by DiMA*,

RadioBroadcasters, National Public Radio and Corporation for Public Broadcasting to Compel SoundExchange to Produce Documents Related to the Testimony of Barry Kessler, Docket No. 2005-1 CRB DTRA at 2 (November 7, 2006). However, **the motion is denied to the extent that the movants now seek “accompanying documentation” not referenced in the document request that is the subject of the motion to compel.** The issue has been waived.

All documents must be provided no later than ten (10) days after the date of this order.

SO ORDERED.



James Scott Sledge
Chief U.S. Copyright Royalty Judge

DATED: March 5, 2010